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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 BRICKLAYERS LOCAL NO. 3 PENSION
TRUST, et al.,

11 Plaintiffs,

12 v.

13 DONGHUA XU, individually and dba UNITED
TILE & MARBLE CO.,

14 Defendant.
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Case No.: C13-4593 JSW

**PLAINTIFFS' REQUEST TO
CONTINUE CASE MANAGEMENT
CONFERENCE; [~~PROPOSED~~] ORDER
THEREON**

Date: April 25, 2014
Time: 11:00 a.m.
Location: 450 Golden Gate Avenue, San
Francisco, CA
Courtroom: 11, 19th Floor
Judge: Honorable Jeffrey S. White

17 Plaintiffs herein respectfully submit this Request to Continue the Case Management
18 Conference, currently scheduled for April 25, 2014, for approximately sixty (60) days. Good cause
19 exists for the granting of the continuance as follows:

20 1. As the Court's records will reflect, this action was filed on October 4, 2013 to
21 compel Defendant to comply with the terms of his Collective Bargaining Agreement.

22 2. Plaintiffs served the Complaint, Summons, and related court documents on
23 Defendant on November 4, 2013. Defendant failed to file an Answer to the Complaint and
24 Plaintiffs requested Entry of Default, which was entered by the court on December 12, 2013.

25 3. An audit of Defendant's payroll records for the time period from October 1, 2008
26 through March 31, 2013 showed that Defendant failed to report and pay required contributions for
27 several of his employees in the years 2008 and 2009. Defendant provided documentation, namely
28 W-2 forms, to dispute the amounts found due to Plaintiffs from the audit of his records. Plaintiffs'

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PLAINTIFFS' REQUEST TO CONTINUE CMC; [~~PROPOSED~~] ORDER THEREON

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1 auditor reviewed the documentation provided by Defendant and revised the amounts due on the
2 audit where required.

3 4. The revised audit report showed that Defendant still owed approximately \$306.00
4 for contributions for work performed by one (1) employee in 2008 and approximately \$4,340.00
5 for contributions for work performed by two (2) employees in 2009, plus liquidated damages and
6 interest on the unpaid contributions, attorneys' fees and costs, and audit fees.

7 5. Defendant provided further documentation to Plaintiffs to dispute the remaining
8 amounts owed on the audit, specifically for the unreported hours worked by two (2) of
9 Defendant's employees in 2009. Defendant provided signed statements from the two (2)
10 employees which claimed that, during the time they worked for Defendant in 2009, they only
11 performed 152 hours of work that was covered by the Collective Bargaining Agreement. The two
12 (2) statements further claimed that the unreported hours showing as due on the audit were spent
13 performing home remodel work on Defendant's personal residence and did not involve any work
14 covered by the Collective Bargaining Agreement.

15 6. Since the statements from Defendant's two (2) employees were not signed under
16 penalty of perjury or notarized, Plaintiffs prepared declarations that restated the claims set forth in
17 the employees' signed statements for the two (2) employees to sign and have notarized. Plaintiffs
18 are currently awaiting receipt of the signed and notarized declarations. Once Plaintiffs receive the
19 declarations, Plaintiffs will continue to attempt to resolve this matter informally with Defendant
20 for the remaining amounts owed on the audit. Should the parties fail to reach an informal
21 resolution of this matter, Plaintiffs anticipate filing a motion for default judgment against
22 Defendant.

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I declare under penalty of perjury that I am the attorney for the Plaintiffs in the above entitled action, and that the foregoing is true of my own knowledge.

SALTZMAN & JOHNSON
LAW CORPORATION

IT IS SO ORDERED.

Date: April 21, 2014

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HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT COURT JUDGE